

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

John T. Thomas,

Complainant,
vs.

ORDER OF DISMISSAL

Ken Braswell,

Respondent.

On October 13, 2008, John T. Thomas filed a Complaint with the Office of Administrative Hearings alleging that Ken Braswell violated Minn. Stat. § 211B.13.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on October 13, 2008, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to Mr. Braswell on October 13, 2008.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a prima facie violation of Minn. Stat. § 211B.13. Therefore, the Complaint is dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by John T. Thomas against Ken Braswell is DISMISSED.

Dated: October 15, 2008

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

Respondent Ken Braswell is a candidate for Hackensack City Council. On or about October 6, 2008, Mr. Braswell and council member Eugene Franzwa donated a computer to the City of Hackensack for use by the city's sewer and water department.¹ On October 6, 2008, the Hackensack City Council voted in favor of accepting the donation of the computer from Mr. Braswell and Mr. Franzwa. The Complaint alleges that Respondent Braswell's donation of the computer to the city violates Minnesota Statutes § 211B.13.

Minnesota Statutes § 211B.13 provides as follows:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. Refreshments of food or nonalcoholic beverages of nominal value consumed on the premises at a private gathering or public meeting are not prohibited under this section.

Minnesota Statutes § 211B.13 is an anti-bribery statute. It prohibits giving something of monetary value to a *person* in order to induce a voter to vote in a particular way at an election. In this case, a candidate provided something of monetary value (a computer) not to a *person* but to the city. Although not specifically alleged, the Complainant seems to suggest that by making this public donation, the candidate has given something of monetary value to all the city's residents in order to induce voters to vote for him.

Because Minnesota Statutes § 211B.13 is also a criminal statute, violation of which is a felony, the rule of strict construction of penal statutes must be applied, notwithstanding the civil nature of these proceedings.² The key issue in this case is whether there has been a giving of a "thing of monetary value" to "a person" "in order to induce a voter to refrain from voting or to vote in a particular way" at an election.

The word "person" is not defined in the statute. Following the rule of strict construction, the Administrative Law Judge will not expand its meaning to include local governments or municipalities. Moreover, such an expansive reading would not promote the statute's purpose. At its heart, the statute is directed against the

¹ Hackensack city council meeting minutes and newspaper article attached to Complaint.

² *In the Matter of the Contest of General Election [Graves v. Meland]*, 264 N.W.2d 401, 403 (Minn. 1978).

bribing of voters.³ The donation of property to a governmental entity and not to individuals simply does not constitute the unlawful inducement or bribery sought to be prohibited by Section 211B.13. To suggest that a whole community will be unlawfully influenced to act in a particular manner based on a donation to the city is unreasonable.⁴ Furthermore, the offer of the computer was made at a public city council meeting and voted on by the council members. The residents of the city can draw their own conclusions as to the purpose or nature of the gift.

In addition, the Complaint does not allege any facts to support a claim that Mr. Braswell donated the computer as an inducement to support his candidacy. The Complaint seems to suggest that any donation from a candidate is necessarily related to his election bid. However, such a conclusion overstates the prohibition in section 211B.13. If the Legislature had intended to prohibit all donations from candidates for public office, it would have stated this intent directly. Instead, section 211B.13 is more narrowly drafted, banning only those gifts provided to persons with the intent of inducing voters to refrain from voting or to vote in a particular way.

Because the Complaint fails to allege that the Respondent gave something of monetary value to *a person* in order to induce a voter to vote for him, it does not state a prima facie violation of Minn. Stat. § 211B.13. For these reasons, the Complaint is dismissed.

B.J.H.

³ Cf. *United States v. Garcia*, 719 F.2d 99, 102 (5th Cir. 1983) (under federal statute prohibiting payment for votes, an assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it).

⁴ See, Op. Atty. Gen. 106-e, April 10, 1995 (offer to provide money and land for relocation of courthouse not a violation of section 211B.13), *citing*, Op. Atty. Gen. 627-B-3, May 6, 1954 (gift of land and money for courthouse construction not a violation of Corrupt Practices Act).